

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AUBREY GOODWIN,)
)
Petitioner,)
)
v.) Civil Action No. 2:09cv60-WHA
) (WO)
UNITED STATES OF AMERICA,)
)
Respondent.)

O R D E R

On January 14, 2009, the petitioner, Aubrey Goodwin, filed a document with this court (Doc. No. 1) wherein he challenges the validity of his convictions and sentence for unlawful distribution of crack cocaine. A review of the petitioner's allegations, to the extent they are understood by this court, indicates that he seeks relief that is appropriate only under the remedy provided by 28 U.S.C. § 2255. *See Wofford v. Scott*, 177 F.3d 1236, 1244 (11th Cir. 1999). "Federal courts have long recognized that they have an obligation to look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework." *United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990). Accordingly, this court concludes that the petitioner's pleading (Doc. No. 1) should be construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

In light of the foregoing, and in accordance with *Castro v. United States*, 540 U.S.

375 (2003), the court hereby advises the petitioner of its intention to re-characterize his pleading as a § 2255 motion. The court cautions the petitioner that such re-characterization will render this motion and any subsequent § 2255 motion filed with this court susceptible to each of the procedural limitations imposed upon § 2255 motions. Specifically, the petitioner is cautioned that the instant motion and any subsequent § 2255 motion shall be subject to the one-year period of limitation and the successive petition bar applicable to post-conviction motions.¹

It is further

ORDERED that on or before February 12, 2009, the petitioner shall advise this court whether he seeks to:

1. Proceed before this court under 28 U.S.C. § 2255 on the claims presented in his pleading (Doc. No. 1) filed on January 14, 2009;
2. Amend his pleading to assert any additional claims under 28 U.S.C. § 2255 on which he wishes to challenge the convictions and sentence imposed upon him by this court; or
3. Dismiss his pleading.

The petitioner is advised that if he fails to file a response in compliance with this

¹“A 1-year period of limitation shall apply to a motion under this section.” 28 U.S.C. § 2255 ¶6. Further, Title 28 U.S.C. § 2244(b)(3)(A) requires that “[b]efore a second or successive [28 U.S.C. § 2255 motion] ... is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

order, this cause will proceed as an action under 28 U.S.C. § 2255 with the court considering only those claims presented in the motion filed on January 14, 2009.

In order to assist the petitioner should he choose to proceed before this court under 28 U.S.C. § 2255, the Clerk is DIRECTED to provide the petitioner with the form for filing a motion pursuant to 28 U.S.C. § 2255.

Done this 23rd day of January, 2009.

/s/Susan Russ Walker
SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE